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No. 07-412

In the Supreme Court of the United States

Peter John Jones,

Petitioner,

v.

The State of Minnesota,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF MINNESOTA

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Does the State of Minnesota have jurisdiction under Public Law 280 to criminally prosecute a Native American tribal member residing on an Indian reservation for failure to comply with the requirements of Minn. Stat. §243.166, the predatory offender registration statute?

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iv

QUESTION PRESENTED i

STATEMENT OF THE CASE 1

ARGUMENT 4

I. The State of Minnesota has jurisdiction under Public Law 280 to criminally prosecute a Native American tribal member residing on an Indian reservation for failure to comply with the requirements of Minn. Stat. § 243.166 (2002), the predatory offender registration statute 5

A. There is no reason to revisit *California v. Cabazon Band Of Indians,* 107 S.Ct. 1083 (1983) and Public Law No. 280, 67 Stat. 588 5

B. A predatory offender's failure to register is inimical to public safety, and, consequently, presents heightened public criminal policy concerns 10

C. The plain language and history of Minn. Stat. § 243.166, subd. 5, demonstrates that it is "criminal/prohibitory" for purposes of state jurisdiction under Public Law 280 11

D. Analyzing the failure to register under the shorthand test in *Stone* dictates the conduct is criminally prohibited and is consistent with *Cabazon*..... 14

E. Taking jurisdiction away from the states would make the State less safe, and should be avoided at all costs 16

F. The United States Congress has granted power to the states to enforce predatory offender statutes 16

G. The Leech Lake Reservation Tribal Council has recognized that predatory offender registration statutes serve a strong public policy interest..... 18

CONCLUSION 19

RESPONDENT'S APPENDIX

Leech Lake Reservation Tribal Council Resolution No. 2006-37 ..... AR-1

Governor's Task Force on Missing Children, Final Report, March 12, 1991 ..... AR-5

Task Force on Sexual Predators, Final Report to the Minnesota Legislature, January 4, 1995 ... AR-33

TABLE OF AUTHORITIES

FEDERAL CASES **Page**

California v. Cabazon Band of Indians
480 U.S. 202, 107 S.Ct. 1083 (1987) .....*passim*

STATE CASES

Boutin v. LaFleur
591 N.W. 2d 711 (Minn. 1999) 12

State v. Busse
644 N.W. 2d 79 (Minn. 2002) 8, 9, 10

State v. Johnson
598 N.W. 2d 680 (Minn. 1999) 15

State v. Jones
700 N.W.2d 556 (Minn. Ct. App. 2005) 3

State v. Jones
729 N.W. 2d 1 (Minn. 2007) ..... *passim*

State v. R.M.H.
617 N.W. 2d 55 (Minn. 2000) 5

State v. Stone
572 N.W.2d 725 (Minn. 1997) .....*passim*

FEDERAL STATUTES

18 U.S.C. § 1162 6

25 U.S.C. § 1302 17

Adam Walsh Act, 42 U.S.C. 16901-16991 4

Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program, 42 U.S.C. § 14071 ..... 16, 17

Public Law 280 ..... *passim*

Supreme Court Rule 10 4

STATE LAWS

Minn. Stat. § 171.24 8

Minn. Stat. § 243.166 ..... *passim*

Minn. Stat. § 243.166 (1991) 11

Minn. Stat. § 243.166 (2000) 13

Minn. Stat. § 243.166 (2002) 2, 3, 4

1993 Minn. Laws 2090 12

1994 Minn. Laws, ch. 636 14

LEGISLATIVE HISTORY

Journal of the House, 81st Leg. Session, 5569 13

LAW REVIEW

The New Battleground for Public Law 280 Jurisdiction: Sex Offender Registration in Indian Country, 101 Nw.U.L. Rev. 897, 926 (2007) 18

STATEMENT OF THE CASE

Petitioner Peter John Jones is an enrolled member of the Leech Lake Band of Ojibwe. Petitioner resides on the Leech lake Indian Reservation, located in Cass County, Minnesota. In July 2001, Petitioner completed a Predatory Offender Notification and Registration form, as required by law, after previously being convicted of the felony of kidnapping. On July 21, 2003, Petitioner completed a Change of Address form notifying the Minnesota Bureau of Criminal Apprehension (BCA) that his new residential address was Unit 007, Pike Bay Township, PO Box 225, Cass Lake, in Cass County, Minnesota. On March 11, 2004, a Cass County Sheriff's Department employee, who was performing routine checks on Cass County predatory offenders, discovered that Petitioner appeared to be noncompliant with the registration requirements of Minn. Stat. §243.166. A Cass County Deputy was assigned to check Petitioner's last known address and was informed Petitioner was residing at a new address located in Cass County, Minnesota. It is undisputed both of the addresses are located on the Leech Lake Indian Reservation. Appendix A, 18-19.[1]

The BCA provided documentation that it had sent residence verification letters, as prescribed by law, to Petitioner on July 1, 2002; June 30, 2003; July 24, 2003; March 30, 2004: and June 28, 2004. Petitioner returned none of the annual registration documents within the 10-day time period prescribed by the statute. Appendix A, 19-20.

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[1] "Appendix A" refers to the Appendix of Petitioner's Petition for Writ of Certiorari.

Petitioner was charged with one count of violating Minn. Stat. § 243.166, subd. 3(b), Registration of Predatory Offenders. A Person is guilty of this crime if the person fails to advise law enforcement of a change of his primary address at least five days prior to changing address. Appendix A, 20.

Petitioner was charged with five counts alleging violations of Minn. Stat. § 243.166, subd. 4(e), Registration Predatory Offenders. A person is guilty of this crime if the person fails to mail the completed and signed verification of address form to the Bureau of Criminal Apprehension within 10 days after receipt of the form. Appendix A, 20.

The "criminal" penalty for these offenses is found in Minn. Stat. § 243.166, subd. 5, (2002) stating a person required to register under this section who knowingly violates any of its provisions or intentionally provides false information to a corrections agent, law enforcement authority, or the bureau of criminal apprehension is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both.

The Minnesota Supreme Court described the procedural history as follows:

> In December 2004, the state charged Jones with one count of failing to notify the BCA of his change of address and five counts of failing to return the required address-verification forms in violation of Minn. Stat. § 243.166, subds. 3(b), 4(e), 5 (2002). Jones moved to dismiss the charges, arguing that the

> State of Minnesota lacked subject matter jurisdiction to prosecute him. A hearing was held on the motion and the district court granted Jones's motion to dismiss. The court concluded that Minn. Stat. § 243.166 is civil/regulatory in nature, and therefore the state lacked subject matter jurisdiction to prosecute Jones. The state appealed, and the court of appeals affirmed the district court. *Jones*, 700 N.W.2d at 558. The state then sought review by our court, arguing that both the district court and the court of appeals erred in concluding that the state lacked jurisdiction.

Appendix A, 20.

The Minnesota Supreme Court held that the district court and court of appeals erred when they concluded that Minnesota courts do not have jurisdiction to enforce the statute against a tribal member who fails to register while residing on his Indian reservation. The Court further held that Minnesota courts have subject matter jurisdiction to enforce the charge of residing or moving without maintaining a current address registration against Jones, even though he is an enrolled member of the Leech Lake Band of Ojibwe who resides-- and therefore violated section 243.166—on the Leech Lake Reservation. Appendix A, 37.

REASONS FOR DENYING THE PETITION

The petition for writ of certiorari should be denied because petitioner has failed to show any "compelling reasons" for this Court to grant discretionary review. Supreme Court Rule 10.

The State of Minnesota has jurisdiction under Public Law 280 to criminally prosecute a Native American tribal member residing on an Indian Reservation for failure to comply with the requirements of Minnesota Statutes §243.166, the Predatory Offender Registration statute. The Minnesota Supreme Court's decision in *State v. Jones*, 728 N.W.2d 1, 12 (Minn. 2007) is consistent with the U.S. Supreme Court decision in *California v. Cabezon Band of Mission Indians*, 480 U.S. 202 (1987). The Minnesota Supreme Court, while having two concurring opinions, did find in a five to two vote, that Minnesota Statute §243.166 met the standard set forth by the U.S. Supreme Court in *Cabezon*. Petitioners are incorrect in their assertion that the Adam Walsh Act, 42 U.S.C. 16901-16991 creates a federal penalty for failing to register by all predatory offenders and thus State intervention is not necessary. Minnesota Statute §243.166, includes individuals convicted of murder and kidnapping offenses wherein the victims are not juveniles. Federal law does not prohibit the State of Minnesota from passing laws that are more inclusive in order to protect the general public.

I. The State of Minnesota has jurisdiction under Public Law 280 to criminally prosecute a Native American tribal member residing on an Indian reservation for failure to comply with the requirements of Minn. Stat. § 243.166 (2002), the predatory offender registration statute.

A. There is no reason to revisit *California v. Cabazon Band of Indians,* 107 S.Ct. 1083 (1983) and Public Law No. 280, 67 Stat. 588.

It is well established that a state may enforce its laws against enrolled tribal members on the tribal reservation when Congress has expressly so provided. *California v. Cabazon Band of Indians,* 107 S. Ct. at 1087. Minnesota is one of six states to which Congress has granted such subject-matter jurisdiction under Public Law 280. Pursuant to this grant of authority, Minnesota has broad criminal and limited civil jurisdiction over all Indian country within the state, except the Red Lake Reservation, which Public Law 280 excepted from the grant of authority, and the Bois Forte Reservation at Nett Lake. *State v. Stone,* 572 N.W. 2d 725, 728 & n.3 (Minn. 1997). *See* also *State v. R.M.H.,* 617 N.W. 2d 55, 58 (Minn. 2000). Public Law 280 specifically states:

> (a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the

> name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory(.)

18 USC § 1162 (a).

In *Cabazon,* the United States Supreme Court adopted the following test for determining whether a state law is criminal and hence fully enforceable on a reservation:

> (I)f the intent of the state law is generally to prohibit certain conduct, it falls within Pub. L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Pub. L. 280 does not authorize its enforcement on an Indian reservation. The shorthand test is whether the conduct at issue violates the State's public policy.

107 S. Ct. at 1088. The Court noted that the distinction it drew is not a bright-line rule, adding: "The applicable state laws governing an activity must be examined in detail before they can be categorized as regulatory or prohibitory." *Id.* at 1089.

Recognizing that *Cabazon* did not clearly state whether the "conduct at issue" that is to be analyzed is the broad conduct or the narrow, the Minnesota

Supreme Court in Stone developed a two-step approach. *State v. Stone,* 572 N.W. 2d 725, 729-730 (Minn. 1997). As the Court observed "(t)his distinction becomes crucial when the broad conduct is generally permitted but the narrow conduct is generally prohibited, or vice versa." *Id.* at 729. When the narrow conduct presents substantially different or heightened public policy concerns, we will focus on the narrow conduct. *Id.* at 730. *See* also *Jones,* 729 N.W.2d at 5.

The first step of the *Stone* approach is to determine the focus of the *Cabazon* test. *Id.* at 730. The broad conduct will be the focus of the test unless the narrow conduct "presents substantially different or heightened public policy concerns." *Id.* Once the focus is identified, the second step is simply to apply the *Cabazon* test: If the conduct is generally permitted, subject to exception, then the law controlling it is civil/regulatory; if the conduct is generally prohibited, the law is criminal/prohibitory. *Id.*; *Jones,* 729 N.W.2d at 5.

The Court in *Stone* specified that in close cases, "conduct is criminal if it violates the state's public policy." *Stone,* 572 N.W. 2d at 730. The Court interpreted "public policy," as used in the *Cabazon* test, to mean public *criminal* policy. Public criminal policy goes beyond merely promoting the public welfare. It seeks to protect society from serious breaches in the social fabric, which threaten grave harm to person or property. Id. The Court identified four factors as useful when determining whether an activity violates the state's criminal policy:

(1) the extent to which the activity directly threatens physical harm to person or property, or invades other's rights;

(2) the extent to which the law provides for exceptions and exemptions;

(3) the blame worthiness of the actor; and

(4) the nature and severity of the potential penalties for a violation of the law.

Id..; *Stone,* 729 N.W.2d 5,6.

In *Jones,* the Minnesota Supreme Court concluded that the broad conduct at issue is residing at an address or moving to a new address by Minnesota residents in general. *Jones,* 729 N.W.2d at 6. The narrow conduct we must analyze is an identified predatory offender residing or moving without maintaining a current address registration with the proper authorities. Id.

In *State v. Busse,* 644 N.W. 2d 79 (Minn. 2002), the respondent was charged by complaint with driving after cancellation as inimical to public safety, a gross misdemeanor. His driver's license had been cancelled, following his fourth alcohol-related offense. Respondent, an enrolled member of the White Earth Band of Ojibwe, moved to dismiss for lack of subject-matter jurisdiction as the offense occurred within the boundaries of the White Earth Reservation. Respondent was charged and convicted of Driving After Cancellation as Inimical to Public Safety, a gross misdemeanor, under Minn. Stat. § 171.24, subd. 5. The Court explained as follows: Busse's gross misdemeanor offense is but one piece of a larger fabric of laws aimed at increasing the severity of punishment against those persons who, due to their

alcohol and drug use, pose a particularly severe threat to the safety of others. The pattern of behavior signals both a significant alcohol or drug problem and a defiance of the laws of our state and, thus, a significant risk to public safety. The ability of Minnesota to protect its citizens would be severely compromised if the state is not allowed to enforce cancellation of driving privileges, one of the most important remedies in terms of public safety, for driving while intoxicated. Id. at 86. The court followed *Stone's* direction to consider the extent to which the activity directly threatens physical harm. *Stone,* 572 N.W.2d at 730. Busse argued his driving could not pose heightened public policy concerns because he was not intoxicated while driving. The Court explained however, Busse's license was canceled because the commissioner determined that any driving of a motor vehicle on a public road by Busse was inimical to public safety. Busse would only be labeled as inimical to public safety under the statute if he had demonstrated at least three incidents in which he consumed sufficient alcohol or drugs to put him over the legal limit, drove, and was caught. Given this history, we can conclude that his driving poses a risk to public safety and implicates heightened public policy concerns. *Busse,* Id. at 85, 86. The court summarized, the criminal sanction imposed, the direct threat to physical harm, the need for the state to be able to enforce cancellations based on a threat to public safety, and the absence of exception to the offense of driving after cancellations based on a threat to public safety, and the absence of exception to the offense of driving after cancellation based on being inimical to public safety all

demonstrate heightened public policy concerns. The court concluded the offense of driving after cancellation as inimical to public safety presents substantially different or heightened public policy concerns. *Busse,* 644 N.W.2d at 87, 88.

In *State v. Busse,* 644 N.W. 2d at 88, the court concluded under the first step of the *Cabazon/Stone* test that Busse's offense presented heightened public policy concerns, and that under the second step of the test driving after cancellation or denial as inimical to public safety is strictly prohibited conduct within the border of the state of Minnesota. Unlike driving in general, driving after cancellation as inimical to public safety, is generally prohibited conduct and under the *Cabazon/Stone* analysis the offense is criminal/prohibitory.

In *Jones* the Minnesota Supreme Court citing *Busse* explained its characterization of the broad and narrow conduct at issue based on what is required or prohibited of certain populations is consistent with the approach taken in *Busse. Jones,* 729 N.W. 2d at 6.

B. A predatory offender's failure to register is inimical to public safety, and, consequently, presents heightened public criminal policy concerns.

The predatory offender registration requirement involves heightened public policy concerns because predatory offenders being free to burrow into communities undetected and strike anonymously is inimical to public safety because of the threat of criminal acts. The laws were created to protect the public from the most heinous of crimes.

Their intent is evident by the stiff penalty for violation of the law, and the fact that the penalty continues to rise. Additionally, registration laws may help deter crimes. First, no one wants to register as a sex offender. Like jail or a criminal record, which can deter crime because of a fear of those consequences, criminals may fear having to register. The law also may serve to deter crime because offenders know they are being monitored, and thus are more likely to be caught if they break the law. A third cause of deterrence is that, where communities have been notified of the offender's presence, offenders are more readily accessible for locating and questioning by law enforcement. This can help prevent crimes the offender would commit if not monitored. Without notification, the public is prey to predators for a much longer period of time, which certainly threatens public safety.

C. The plain language and history of Minn. Stat. § 243.166, subd. 5, demonstrates that it is "criminal/prohibitory" for purposes of state jurisdiction under public law 280.

In order to properly apply the jurisdictional test established in *Cabazon* and *Stone,* it is necessary to understand the state's public policy regarding predatory offenders and the felony offense of failure to register as a predatory offender. Minn. Stat. § 243.166, subd. 5, and its registration requirements clearly address heightened public policy concerns of protecting the public from dangerous predators.

In 1991, Minnesota enacted its first sex offender registration law. *See* Minn. Laws 1991, ch. 285 § 3, codified at Minn. Stat. § 243.166. Prior to

the enactment of that law, the Governor's Task Force on Missing Children was commissioned by then Governor Rudy Perpich in July, 1990, in direct response to the abduction and kidnapping of Jacob Wetterling with the ultimate goal of benefiting all missing children. *See* 1991 Task Force Report, Appendix R, 5.[2]

The legislative history of the registration law also demonstrates the public safety concerns addressed by registration. Initially, the statute required persons convicted of certain enumerated felony offenses to register upon release from prison pursuant to the 1991 Task Force Report. Appendix R, 5. This law was amended in 1993 to require registration by persons charged with an enumerated felony offense and convicted of that offense or of another offense arising out of the same set of circumstances, pursuant to the Act of May 20, 1993, ch. 326, art. 10, §1, 1993 Minn. Laws 2090. This change stopped the use of plea negotiation to avoid registration. *Boutin v. LaFleur,* 591 N.W.2d 711, 714-715 (Minn. 1999).

A 1995 Task Force on Sexual Predators recommended further amendments and noted, "These measures will provide an added level of safety to the public by strengthening Minnesota's sex offender registration law . . . " Task Force on Sexual Predators, Final Report to the Legislature, Jan. 4, 1995 (1995 Task Force Report).[3]

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[2] "Appendix R" refers to the Appendix of Respondent's Brief in Opposition.

[3] The 1995 Task Force Report is part of the legislative history of the offender registration law, and a copy of it is reproduced in

After Donald Blom kidnapped and killed Katie Pourier, the legislature in 2000 made major changes to the statute. These included requiring reporting of all real property owned and all cars regularly driven by the offender. *See* Minn. Stat. § 243.166, subd. 4a (1-5) (2000). The Legislature also increased the severity of failure to register to a felony level offense, thus further emphasizing that failure to register is a serious crime which is completely prohibited in this state. *See Journal of the House*, 81st Leg. Session, 5569 (Minn. Feb. 3, 2000). The Senate sponsor described the felony penalty as "perhaps the most important" change in the statute and indicated that for public safety, Minnesota needed "a strong deterrent" against failing to maintain registration. (*See* statements of Senator Reichgott-Junge, *Senate Crime Prevention Committee*, Feb. 7, 2000 and Feb. 9, 2000.)?? In *Jones*, 729 N.W.2d at 7, the Minnesota Supreme Court concluded the legislative history of section 243.166 indicates a predatory offender residing or moving without maintaining a current address registration with the proper authorities presents a substantially different or heightened public policy concern when compared with Minnesota residents in general. The Court therefore concluded the narrow conduct of a predatory offender should be the focus under the *Cabazon/Stone* test. *Id.* at 8.

The Minnesota legislature has exercised its authority to target and to promote the effective investigation and enforcement of predatory crimes. This criminal conduct is particularly harmful to victims, prone to recidivism, and difficult to

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the Appendix of Respondent's Brief in Opposition at Appendix R, 33.

investigate. The purpose of Minn. Stat. § 243.166 is to create a database of prior predatory offenders to assist law enforcement investigation. (*See* Minn. Laws 1994, ch. 636, preamble.) The value of such data base increases if it becomes as complete as possible. The ability to criminally prosecute all offenders who fail to register or otherwise fail to comply with the statute is thus essential. Failure to register raises heightened public safety concerns, is strictly prohibited in this state, is contrary to the public policy against predatory behavior, and is therefore "criminal-prohibitory" for purposes of state criminal jurisdiction under Public Law 280.

D. Analyzing the failure to register under the shorthand test in *Stone* dictates the conduct is criminally prohibited and is consistent with *Cabazon*.

Under the *Cabazon/Stone,* when applying "shorthand test public policy test," the Minnesota Supreme Court considers four non exclusive factors in determining "whether an activity violates the state's public policy in a nature serious enough to be considered 'criminal.'" *Stone,* 572 N.W.2d at 730. The first issue is whether the conduct directly threatens physical harm, or invades the rights of others. The operative word is threatens. A predator failing to register, without anything else occurring, threatens the community because at that point he cannot be observed. It is important to note that this factor does not state that "should the conduct occur, physical harm is imminent." In order to violate public criminal policy, the law does not have to stop the individual from driving drunk; to violate public

criminal policy the law can stop the driver from driving at all because any driving by someone with the history of driving under the influence directly threatens public safety because of the increased likelihood the driver will drive drunk. The situation is similar in Jones, predators living unregistered directly threaten public safety because they are (at least have been deemed by legislature) more likely to commit predatory crimes than others, and the legislature has determined registration helps stop them.

The second factor in the shorthand test is to consider whether there are exceptions to the prohibition of the conduct in question. There are no exceptions statewide to the enforcement of predatory registration. The third factor is blameworthiness of the offender. Blameworthiness means the perpetrator knew what they are legally required to do, and did not do it. *State v. Johnson,* 598 N.W.2d 680, 689 (Minn. 1999). In *Jones,* 729 N.W.2d at 9, the Court concluded Jones was aware of the requirements of section 243.166 and knowingly refused to comply with those requirements, and therefore demonstrated a high level of blameworthiness in failing to maintain a current address registration.

The fourth factor is the penalty of the conduct. Failing to register as a predatory offender is a felony, and can be punished by being sent to prison for up to five years. *See* Minn. Stat. § 243.166.

E. Taking jurisdiction away from the states would make the state less safe, and should be avoided at all costs.

Taking jurisdiction away from the state on Indian Reservation would have the cumulative effect of making all communities, on and off the reservation, less safe. The inability to monitor predatory offenders on the reservation would create a break in the chain of registration; offenders could slip through the cracks of the monitoring system by moving onto a reservation, and then moving off. While the predatory offender would be under the state's jurisdiction once off the reservation, it would be difficult for authorities to enforce the requirement because they would not be able to track them when they were on the reservation. Also, pursuant to Minn. Stat. § 243.166, the general public is required to be informed of the location of highly ranked, dangerous sex offenders.

F. The United States Congress has granted power to the states to enforce predatory offender statutes.

Jacob Wetterling crimes Against Children and Sexually Violent Offender Registration Program, 42 U.S.C. § 14071, provided mandatory guidelines for Attorney Generals to adopt state registration programs for certain crimes. The act is the result of a national program to track certain predatory offenders. Section 14071 (d) – Penalty provides as follows:

> A person required to register under a state program established pursuant to this

> section who knowingly fails to so register and keep such registration current, shall be subject to criminal penalties in any state in which the person has so failed. (emphasis added).

It can certainly be argued that Congress intended a violation of State registration laws to be criminal in nature based on the plain meaning of Section 14071 (d). The State of Minnesota has adopted Minnesota Statute § 243.166 – Registration of Predatory Offenders in an effort to comply with the federal legislation. The Minn. Stat. § 243.155, subd. 5(a) provides for a maximum penalty of five years in prison and a $10,000 fine for violation of registration statutes. Taking jurisdiction away from the State on Indian Reservation would create a checkerboard effect of enforcement on Indian Reservations such as the Leech Lake Reservation. The Leech Lake Reservation is an open reservation, wherein both Indian and non-Indians reside. 25 U.S.C. § 1302 (7) of the United States Code only allows Indian tribes exercising the power of self-government to impose maximum penalties of up to one year in prison and a fine of $5,000 or both. It does not appear that barring passage of federal legislation, that Indian tribes could enforce penalties similar to the State's felony laws, even if it were so inclined to do so.

G. The Leech Lake Reservation Tribal Council has recognized that predatory offender registration statutes serve a strong public policy interest.

On November 21, 2005, the Leech Lake Reservation Tribal Council passed Resolution No. 2006-37, signed by the Chairman and Secretary/Treasurer of the Leech Lake Tribal Council. Appendix R, 4. The Resolution was duly presented and acted upon by a vote of three for, zero against, and one silent at a special meeting of the Leech Lake Tribal Council, quorum being present, held on November 21, 2005 at Cass Lake, Minnesota. Appendix R, 1. The resolution states as follows:

> BE IT FINALLY RESOLVED, the act of failing to register raises significant public safety concerns because it restricts the ability of law enforcement to track those persons whose prior convictions have conclusively established that they are dangerous to others.

Appendix-R, 3.

Although the Leech Lake Tribal Council exercised its tribal sovereignty in declaring that it viewed the predatory offender registration code as a criminal matter, the tribe effectively returned its jurisdiction back to the State. *The New Battleground for Public Law 280 Jurisdiction: Sex Offender Registration in Indian Country,* 101 Nw.U.L. Rev. 897, 926 (2007). This decision was motivated by the strong public safety threat posed by predatory offenders; the tribe's view that under Public Law 280

this matter should be under the State's jurisdiction; and the tribe lacked resources to effectively implement its own registration code. *Id.* Obviously, the Leech Lake Tribal Council recognizes the seriousness of having predatory offenders register with the State of Minnesota and wants the State to enforce its statutes on the reservation.

CONCLUSION

The Petition for Writ of Certiorari should not be granted as Petitioner has failed to establish any compelling reason for the Court to accept review. The Minnesota Supreme Court's decision in *Jones* does not conflict with U.S. Supreme Court decisions. The State of Minnesota has properly exercised its authority in requiring predatory offenders to register pursuant to Minnesota Statute §243.166.

Dated: November 21, 2007

Respectfully submitted,

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LEECH LAKE RESERVATION TRIBAL COUNCIL RESOLUTION NO. 2006-37

Mandatory Registration of Predatory Offenders in accordance with Minnesota Statutes §243.166 and §243.167.

WHEREAS, the Leech Lake Band of Chippewa Indians is a Federally recognized Indian Tribe organized under the Indian Reorganization Act of 1934, and operating under the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe; and

WHEREAS, the Leech Lake Reservation Tribal Council is the duly elected and authorized governing body of the Leech Lake Reservation pursuant to Article VI of the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe; and WHEREAS, the Leech Lake Tribal Council is charged with the responsibility of protecting and advocating for the health and welfare of Leech Lake Band members within the Leech Lake Reservation boundaries; and

WHEREAS, the state of Minnesota requires predatory offenders to register under Minnesota statute §243.166 and §243.167; and

WHEREAS, the Minnesota Court of Appeals in State v. Jones (File No. K8-04-1154) declared that Minnesota Predatory Offender Registration statute §243.166 is civil regulatory in nature and therefore the state of Minnesota does not have jurisdiction to apply the statute to Native American tribal members residing on an Indian reservation; and

WHEREAS, the Minnesota Predatory Offender Registration Statute serves a strong public policy

interest by monitoring predator offenders through mandatory registration; and

WHEREAS, it is vital to the safety of tribal members residing within the boundaries of the Leech Lake Reservation and vital to all residents who reside in the surrounding communities on or near the Leech Lake Reservation to have a uniform mandatory predatory offender registration statute to assist law enforcement in identifying possible suspects in murder, criminal sexual conduct and kidnapping cases and providing notification to the public concerning where level 3 offenders will be residing in the community; and

WHEREAS, the Leech Lake Band of Ojibwe Tribal Court is currently set up to handle various family law cases, conservation code violations and civil regulatory cases without the current capability of handing down jail sentences, also due to limitations imposed by federal law under the Indian Civil Rights Act of 1968; codified at 25 U.S.C. 1301-1303 (limiting maximum penalties which tribal courts may impose to 1 year in jail and a $5000 fine); and

WHEREAS, predatory offenders who are required to register under the Minnesota Predatory Offender Statute who knowingly violate any of its provisions or intentionally provide false information to a corrections agent, law enforcement authority, or the Bureau of Criminal Apprehension are subject to a felony conviction and may be sentenced to imprisonment for not more than 5 years or to payment of a fine of not more than $10,000, or both; and

WHEREAS, it is the belief of the Leech Lake Tribal Council that the Leech Lake Reservation communities would be better served by having felony level consequences for violation of the predatory offender registration statutes as opposed to petty misdemeanor consequences;

NOW THEREFORE BE IT RESOLVED, in order to better serve and protect Leech Lake Reservation communities, all Minnesota Chippewa Tribe members who reside within the Leech Lake Reservation boundaries and who would be subject to Minnesota's mandatory predatory offender registration statutes if they lived off the Reservation are hereby required to register with the state of Minnesota and further required to comply completely with Minnesota statutes §243.166 and §243.167.

BE IT FINALLY RESOLVED, the act of failing to register raises significant public safety concerns because it restricts the ability of law enforcement to track those persons whose prior convictions have conclusively established that they are dangerous to others. Accordingly, failure to comply with Minnesota Statutes §243.166 and §243.167 will result in felony prosecution in state court under the State of Minnesota's Public Law 280 criminal/prohibitory jurisdiction.

WE DO HEREBY CERTIFY that the foregoing Resolution was duly presented and acted upon by a vote of 3 for 0 against 1 silent at a Special Meeting of the Leech Lake Tribal Council, quorum being present, held on November 21, 2005 at Cass Lake, Minnesota.

s/_____
George Goggleye, Jr,, Chairman
LEECH LAKE TRIBAL COUNCIL

s/_____
Arthur LaRose, Secretary/Treasurer
LEECH LAKE TRIBAL COUNCIL

GOVERNOR'S TASK FORCE

ON MISSING CHILDREN

Final Report
March 12, 1991

TABLE OF CONTENTS

1. INTRODUCTION

2. Non-family Member Abduction Subcommittee.
   Report ..... Page 4
   Recommendations ..... Page 7
3. Parental Abduction Subcommittee.
   Report ..... Page 8
   Recommendations ..... Page 11
4. Runaway - Throwaway Children Subcommittee.
   Report ..... Page 12
   Recommendations ..... Page 14
5. Public Education - Information Subcommittee.
   Report ..... Page 16
   Recommendations ..... Page 17
6. System Needs Subcommittee.
   Report..... Page 18
   Recommendations ..... Page 20
7. Summary ..... Page 21
8. Task Force Members ..... Page 23

INTRODUCTION

In July 1990, then Governor Rudy Perpich commissioned 27 Minnesota citizens as members of a Task Force on Missing Children. It was formed in direct response to the kidnapping of Jacob Wetterling with the ultimate goal of benefiting all missing children. They were charged to deal with issues

related to Minnesota children who are, were, or potentially could be missing from their homes. By February 15, this Task Force was to draft recommendations and present them to the Governor in the form of a report.

The Task Force members selected represent a variety of agencies and perspectives and collectively brought a broad base of knowledge to the task. Task Force members represent human service agencies, education; law enforcement, social service agencies, special projects which deal with missing youth, criminal justice, the arts, the religious community, parents with missing children and concerned citizens. Names and addresses are included in this report.

Due to the diversity of issues, the Task Force formed into 5 subcommittees. The topics they dealt with were non-family abduction, parental abduction, runaways and throwaways, public education/information and system needs. Each subcommittee was instructed to set forth two (2) recommendations which would be brought to the committee at large and subsequently become a part of the report to the Governor.

The categories of children addressed within the responsibility of this committee and the issues of such magnitude that each committee found it impossible to stay within the guidelines of two (2) recommendations. Each committee, therefore, selected those recommendations which have the potential for preventing children from becoming victims and which deal with the issues involved when children are reported missing.

These subcommittee recommendations comprise the major body of this report. Each subcommittee's recommendations are those of the

members of the committee listed within that report. The content of each report was presented to the Task Force at large and is acknowledged as addressing the major issues within that subcommittee's area of responsibility.

NON-FAMILY MEMBER ABDUCTION SUB-COMMITTEE

According to a study conducted in mid-1990 by Dr. Gunnar Stickler, an emeritus pediatrician with the Mayo Clinic in Rochester, when asked "What are the greatest perceived risks of parents regarding their children?" - 72% responded with the fear that their child will be kidnapped by a stranger. Although this is the smallest portion of "missing" children, it is the most threatening to the child and the most feared by the parent.

Our subcommittee looked at different states' legislative changes and conclusions of their studies, at the Selected State Legislation Guide Book from the National Center for Missing and Exploited Children at the National Incidence Study of Missing, Abducted, Runaway, and Throwaway Children (NISMART) and realized that although we hear about abductions only occasionally in Minnesota, every region of the country is experiencing the same thing. This is a major national problem that is, in large part, going unsolved.

Our subcommittee learned citizens are concerned and outraged about the abduction of Jacob Wetterling, but there is a great need to pay attention to the less publicized, far more frequent sexual violations against children. There are a very large number of "stranger" abductions that are short term and involve taking children for the purpose of sexual

molestation or victimization. The legal definition of Non-Family Abduction used in the NISMART Summary meant:

> "the coerced and unauthorized taking of a child into a building, a vehicle, or a distance of more than 20 feet; the detention of a child for a period of more than an hour; or the luring of a child for the purposes of committing another crime."

While Minnesota statute does not specifically define non-family abduction, it is included within statute 609.25; subdivision 1. Acts Constituting, which states:

> Whoever, for any of the following purposes, confines or removes from one place to another, any person without the person's consent or, if the person is under the age of 16 years, without the consent of the person's parents or other legal custodian is guilty of kidnapping and may be sentences as provided in subdivision 2:
>
> (1) To hold for ransom or reward for release, or as shield or hostage; or
> (2) To facilitate commission of any felony or flight thereafter, or
> (3) To commit great bodily harm or to terrorize the victim or another; or
> (4) To hold in involuntary servitude.

And in 609.25; Subdivision 2. Sentence, which states:

> Whoever violates subdivision 1 may be sentenced as follows:
>
> (1) If the victim is released in a safe

> place without great bodily harm, to imprisonment for not more than 20 years or to payment of a fine of not more than $35,000, or both; or
> (2) If the victim is not released in a safe place or if the victim suffers great bodily harm during the course of the kidnapping to imprisonment for not more than 40 years or to payment of a fine of not more than $50,000, or both.

When a child is abducted, molested and released, which is usually the case, it is often recorded as a molestation, although the crime is based on the abduction. Research from the Kevin Collins Foundation shows that it's child molesters who abduct children. The NISMART Summary states that two-thirds or more of abductions which met the legal definition involved sexual assault and over 85 percent involved force. Most child molesters were themselves victims of the same sort of treatment. However, it must be noted that not all molested children become child molesters. Growing up, molesters often started by fondling children in or around the family. The U.S. Advisory Board on Child Abuse and Neglect reported in June, 1990 that there were 900,000 substantiated cases of child abuse and neglect in 1989.The majority of these crimes were reportedly perpetrated against these children by members of their own households.

Research has demonstrated that sex offenders are repetitive and compulsive. Research also demonstrates that child sex offenders will continue their abuses for years and rarely are "cured." The

primary goal of treatment focuses on teaching offenders to control their impulses.

Studies show we need to break the cycle of child molesting. This has to start by acknowledging how big the problem is. We all agree that it's never O.K. to molest a child - not your own, not your neighbor's, not any child.

According to the 1988 NISMART Executive Summary, abductions by non-family members reported to police ranged as high as 4,600 per year, with many more unreported, and 114,600 children reported abduction attempts which were successfully thwarted. The FBI Journal states that "like rape, child molestation is one of the most under reported crimes, and virtually every study...acknowledged that only 1 to 10 percent of the incidents are ever disclosed."

Most abductions are short term. The child is most often molested then released. Often the family feels shame (though undeserved) and believes the child has suffered enough, hence, does not report the crime. It is critical that efforts toward elevating public awareness are increased, informing people of the importance of reporting instances of child molestation and or abduction. Our subcommittee's recommendations began to focus on a centralized system of reporting this information and tracking the child molester.

Ernie Allen from the National Center for Missing and Exploited Children points to California as having a good model for registration of sex offenders. We met with Senate Counsel to see how we can most effectively adapt their system in Minnesota. The main change we would propose is the establishment of a violent crime center. This center

would expand on existing Bureau of Criminal Apprehension (BCA) efforts and would contain an investigative support unit and a system to facilitate the identification and apprehension of persons responsible for murder, kidnap, including parental abduction, false imprisonment or sexual assault.

Sex offenders typically have a high rate of recidivism. For investigatory and safety reasons, law enforcement agencies must know where sex offenders reside. Currently in Minnesota, "When the sex offender is discharged from supervised release or probation, the probation officer shall inform all law enforcement agencies notified under this section. Every agency shall then destroy the data." (Section 243.165 NOTICE OF SEX OFFENDERS ADDRESS Subd. 3.)

Our subcommittee would like to see mandatory treatment for sex offenders. Since sex offenders are routinely returned back to the streets, treatment may provide them with the opportunity to change their behavior. Treatment, especially in the case of the young offender, may play a useful role in attempts to break the cycle of child molesting. One fact cannot be ignored; the problem of child physical and sexual abuse is costing our country. 90% of convicted felons, 75% of adolescent prostitutes and 70% of adolescent drug users report that they were victims of physical and/or sexual abuse as children.

There is a need for additional study regarding record checks on students who are new to a school district. This study should investigate the feasibility of checking for AR-12 proper identification, as well as verification that new students are with their proper parent or guardian. It would also be fairly simple to flag the school records of a child who is currently, or

was previously, enrolled upon notification that a child has been reported missing.

There is a need to develop programs which seek offender resources to pay for counseling and treatment for children who are victims of sexual abuse and exploitation.

Upon pulling together many resources for this Governor's Task Force, our subcommittee quickly became aware of many complications in seeking solutions. Our children could benefit from further study into the dangers facing them today. We recognize the need for public education and awareness about the very large problem of child molestation and exploitation. These programs often trigger children to report their own stories of victimization. All children are at risk of being sexually molested, assaulted or abducted. Minnesota legislators must pay attention to the loud voices calling for change in priorities with regard to our children. These recommendations will create a safer world for all our children.

When asked about child molesting, pornography and prostitution, a law enforcement official said, "The only way not to find this problem in your community is to not look." Statistics show that for Jacob and all the other children at risk, we can no longer afford to look the other way.

SUBCOMMITTEE MEMBERS: Petty Wetterling, Chair; David Baraga, St. Sen. Joe Bertram, Sr., Marcia Cummings, Kim Frank, Sheriff Jim Kostraba, Marc McMullen, Rosanna Walker

RECOMMENDATIONS

1. Registration of convicted sex offenders.
2. Establishment of a Violent Crime Center.
3. Time limit of 4 hours in which law enforcement agencies submit their reports to the Violent Crime Center.
4. The BCA should provide training about the use of the Violent Crime Center to appropriate agencies.
5. Change the sentencing guidelines so that there is imprisonment after 2 convictions of 2nd degree sexual assault instead of 3 convictions.
6. Mandatory treatment for sex offenders.

FURTHER STUDY IS NEEDED IN THE FOLLOWING AREAS:

1. Checking school records and flagging students.
2. "Child Victim's Bill of Rights" as suggested by the National Center for Missing and Exploited Children.
3. The disproportionate victimization of disadvantaged youth.
4. Pornography Issues

SOURCES

1) National Incidence Study of Missing, Abducted, Runaway, and Throwaway Children (NISMART)

2) "Help Us Find Abducted Children" The Kevin Collins Foundation 1990

3) "Help Us Find Abducted Children."

4) "An abducted child tells how he could have been found" The Kevin Collins Foundation

5) Project Charlie's Safe Program - A program of Storefront Youth Action, Edina, Minnesota 1989

6) Keynote address Transcript - Ernest E. Allen, President The National Center Missing and Exploited Children November 10, 1990 - St. Cloud Civic Center

7) Task Force on Community Protection - Final Report to Booth Gardner, Governor State of Washington

8) Task Force on Community Protection

9) Project Charlie's Safe Program - A program of Storefront Youth Action, Edina, Minnesota, 1989

10) Project Charlie's Safe Program

PARENTAL ADDUCTION

Each year an estimated 354,000 children are abducted by one parent from the custody of the other parent. In the typical child kidnapping case, a noncustodial parent abducts the child from the custodial parent, often with the aid of relatives. Informal surveys have suggested that abducting parents are emotionally unstable at the time of the abduction. These parents also demonstrate a history of violent or abusive behavior, having abused their spouse or children in the past. Thus, an abduction places the entire family in a situation which, short of the death or life threatening illness of a child, is among the most disruptive of family events.

For the child, "life on the run" can become a constant refrain of moving from one location to the next, avoiding close ties with anyone and being fed distortions about the other parent. According to data from Missing Children Minnesota, many child victims who have been recovered were physically, sexually and/or emotionally abused while in hiding.

Minnesota Statute 609.26 makes parental

kidnapping, including both child abduction and concealment, a felony. The statute also provides that, at the discretion of the court, the cost of returning the child to the custodial parent may be allocated to the abductor. It allows as a defense that the abducting parent or concealer reasonably believes the child to be in physical danger while in the custody of the other parent.

While the law provides a criminal penalty for parental abduction, the speedy return of the child is more likely to be affected by the right of the custodial parent to pursue a civil cause of action. This would allow the parent who has the right of custody, control and services of a child to maintain an action for damages against ANYONE who actually or allegedly assisted the noncustodial parent in abducting or concealing a child (or children) from the custodial parent.

Since the sooner an ambitious search is begun, the better the chances of recovery, it is important that statute provide for a speedy search. The current language in the statute says that a child may be missing for fourteen (14) days before a search is begun, many law enforcement agencies will not seriously become involved in a parental abduction case for two (2) weeks. This time needs to be shortened to affect the return of children to their custodial parent.

The defense that is currently available to the abducting parent provides them with the opportunity to exploit the system. A requirement needs to be added so that the abducting parent has, on file, a statement that they have reason to be concerned for the safety of the child (or children) while they are in the care of the custodial parent.

Subcommittee members: Marge Romero, Chair: Carol Watson, Colleen Lloyd.

RECOMMENDATIONS

1. Right of the custodial parent to take civil action against anyone who abducts, conceals or assists in the abduction or concealment of the child (or children).
2. Change "14 day" language, as length of time before search must be instigated, in Statute 609.26 to three (3) days.
3. Require abducting parent to have on record with a child protection agency that he/she believes child is in physical danger in care of custodial parent if he/she is going to use a portion of this statute as a defense.
4. Statewide law enforcement agencies treat parental abduction cases as the felony crimes that they are and that county attorneys prosecute the cases.

RUNAWAY AND/OR THROWAWAY CHILDREN

A child runs away from home every twenty six seconds in the United States. Research compiled by the U.S. Department of Justice Studies estimates that there are at least 700,000 to 1,000,000 runaway and/or throwaway children in America, half of which go unreported to authorities. The Minnesota Department of Human Services reports Minnesota ranks fourth in the nation as having the most homeless youth. Its estimate is that there are up to 1,000 runaway and/or throwaway children on the street of Minneapolis and St. Paul on any given night. Youth workers and numerous studies report that in a majority of cases, family conflict or violence

precipitated a youth's decision to run away from home.

Although studies reviewed indicate that Minnesota has funded crisis intervention efforts in the past, early intervention efforts that could have prevented a major part of this problem are virtually non-existent and those that are attempted are inadequate and, often, inappropriate. It is important that the legislature make isolating and treating the causal factors of runaway and/or throwaway youth a priority, if these children are to become productive, functional members of our future society.

Throwaway children are defined as those who:

1) are asked to leave home;
2) leave and are told not to return home;
3) after they leave are not looked for by parents or guardians;
4) are deserted or abandoned.

There are approximately 127,000 throwaway children nationwide, according to estimates by the Department of Justice. While throwaways consist predominately of older teens from low income families, a disproportionate number of those who are deserted or abandoned throughout the U.S. are under age four (4). Professionals within the Task Force related these findings are also reflective of the current situation in Minnesota.

From January to September 1990, 7,604 children were entered in the Minnesota Crime Information System (MINCIS) as runaway youth. Those missing under suspicious circumstances, lost, throwaway, suspected victims of child abuse, sexual abuse or parental abduction cases are not classified, as such. Total numbers of runaway cases not cleared

by cancellation, voluntary return, arrest or for other reasons as of September 1990, in MINCIS, is 2,725. 1,627 of these youths have not been heard from in over one year.

While it is generally accepted that runaways are disadvantaged youth, workers with Project Off streets report that the children they serve are from all racial, ethnic and socioeconomic backgrounds. However, a large number of these youths come from stepparent families or have run away from system or institutional care such as foster homes, shelters or group homes. In comparison to runaways, throwaways report experiencing a higher degree of family conflict and have been victims of, or witness to, more violence in their home environment.

Studies of the lives of abusers, report that at least one third of them have been physically and sexually abused as children. Many others suffer from neglect throughout their early lives. Society has not treated these children well, with commonly held beliefs that the child's own actions brought on the situation, that they came from bad families or that they themselves were willful, bad children. If the children are of color, they are held in even less regard by society.

All children must get the message that they have a right to live free from abuse and that there are people who will provide them with help, if they will ask for it. The serious core issues of abuse and neglect experienced by throwaways and/or runaways will have long term implications not only for these children but, if not dealt with, will have a far reaching, extensive impact on society.

Public education needs to sensitize society to the plight of runaway/throwaway youth. These

messages need to be stated in clear, concise language on topics such as child abuse and neglect, alcoholism, effective parenting, and discipline. This should include educational policy at the district level and provide age appropriate information about physical, sexual and mental abuse to students. Teachers and other staff members would need to be trained in child abuse prevention curriculum and updated on reporting laws.

There need to be disincentives to those who take advantage of runaway and throwaway youth and a variety of services available for youth who are in crisis. This involves increasing the penalty under current Criminal Code 609.322, Subdivision, Solicitation Inducement and Promotion of Prostitution, Individuals Aged 16-18 from a five (5) year felony to a ten (10) year felony. Law enforcement policy on the investigation of reported runaways/throwaways needs to be standardized statewide and federal legislators should be lobbied to introduce legislation mandating uniformity in laws pertaining to these children.

Providing a resolution to the problem of runaways and throwaways involves intervention at the preventative (to keep situations from occurring), secondary (to keep current situations from recurring), and tertiary (to intervene to resolve the situation).
Subcommittee Members: Colleen Lloyd, Chair; Pat Gharrity, Tom Gray, Don LeTourneau, Ed McBrayer, Marge Romero.

RECOMMENDATIONS

1) Develop a massive public education campaign emphasizing helping, saving and protecting our children.

2) Change Minnesota Criminal Code 609.322, subdivision 2, "Solicitation Inducement and Promotion of Prostitution, Individuals Aged 16-18..." to increase penalty to a 10 year felony.

3) Formalize policy at the district level to teach age appropriate, nonthreatening material about physical, sexual and mental abuse, communication and family living skills and chemical dependency with training for educators in child abuse prevention.

4) Develop a 24 hour hotline for youth in crisis to call for counseling and resources.

5) Standardize law enforcement policy on the investigation of cases of runaways/throwaways with emphasis on increased interaction between law enforcement and social service agencies.

6) Differentiate problems of runaways and throwaways from those of other missing child in policy, research and publications throughout the state.

7) Focus on the problem of children who run from institutions and other forms of system care, since they are among the most chronic of runaways and at the highest risk of becoming crime victims and/or crime perpetrators.

8) Develop an interdisciplinary approach between the agencies identifying, intervening and treating the problems of families of throwaways and runaways.

9) Establish group home settings for high-risk youth, such as minor AFDC recipients and adolescent prostitutes, and specialized therapeutic foster home, for runaway and throwaway youth.

10) Authorize funding to provide family intervention services for agencies with programs designed to encourage usage by runaway and

throwaway youth and to providers of shelter, food, counseling, medical screening and care, vocational and, educational programs to runaway/throwaway youth.

11) Provide incentives for long term stabilization planning for family reunification or independent living for youth who are runaways and throwaways.

PUBLIC EDUCATION/INFORMATION

There are a variety of issues involved in educating and informing the public concerning missing children. These involved fiscal resources, prevention curriculum, the opposition to curriculum, ownership of the problem, society's concern for the welfare of all children, family life education, living skills education, communication between prevention programs, citizenship and self esteem.

Most success will result from providing strong prevention programs which present balanced information and promote empowerment and self esteem. These programs will be available to children, educators, parents and community members.

School based programs which involve the community in their efforts, particularly parents and members of religious communities, should be encouraged. An example of one such program is the Maxine Waters Child Abuse Prevention Training Act of California. Public service announcements should elevate public awareness of the missing children problem and the prevention efforts that are successful.

The goal of prevention programs should be to keep offenses from occurring and recurring by working with potential and actual victims as well as potential and actual offenders. Minnesota currently has a variety of programs which have had varying

degrees of success. Programs which have proven their success should be strengthened and expanded, such as the Children's Trust Fund.

The Governor should appoint a permanent task force to identify community-based groups involved in prevention and network them with other groups. This group should also investigate funding sources and provide this information to the prevention groups.

Subcommittee Members: Nancy Riestenberg, Chair Dianne Brieeun, Janis Fuller, Denise Revels-Robinson, John Vackel.

RECOMMENDATION

1) Strengthen and expand the Children's Trust Fund by increasing funding to maintain and support current programs and services. Funding could also be used to develop and expand these services

2) Expand current prevention/education efforts (e.g. public service announcements) that include a focus on state and local services currently available.

3) Encourage the development of public service announcements concerning missing children which would also include and address societal and cultural attitudes regarding children and violence.

4) Promote and fund school curricula, public service announcements, etc., that advocate alternative parental disciplinary behavior in general and specific non-violent parenting skills.

5) Establish prevention/education programs in schools where none exist and assist with the development of training tools and materials.

6) Support and encourage the dissemination of related information through existing resources (e.g.

radio, newspapers, television) which serve communities of color using language and culturally appropriate materials.

7) Disseminate information on missing and exploited
children to all existing programs and encourage them to incorporate this information as part of their ongoing educational efforts.

8) Establish a permanent Task Force to identify, network and coordinate community-based prevention groups and assist them in finding resources to extend their efforts. The Children's Trust Fund could be expanded to fulfill this need as could the Minnesota Missing Children's Center (see recommendation #3).

SYSTEM NEEDS

Since the members of the Task Force came from diversified backgrounds and had been involved in the problems associated with missing children both personally and professionally for many years, the system(s) needs became identified through their collective experiences. These individuals related that calling attention to the extent of the problem; educating the public, including specific training for various targeted agencies and individuals; and impacting the services provided by the ECA are ways in which the system can be impacted.

The greatest impact upon systems, initially, would be through educating the public and agency personnel. Task Force members related that at present there is little done by most agencies to train their personnel in dealing with issues related to missing children. Even those agencies providing services to children and their families on a daily basis have no training sessions. In many agencies, the

basic information on prevention strategies, sensitivity to families needs, differentiation between categories of missing children, and other issues is not presented effectively or, in many cases, is not presented at all.

There is a need for information and training for all personnel involved in any aspect of missing children, including those who come in contact with young children on a regular basis (preventive), those who search for and/or work with targeted (at risk) or runaway/throwaway youth (secondary), and those who deal with the many problems of missing children and their families (tertiary), as well as parents and community members. This information should be broad based to encompass the varied problems and issues involved in the overall category of missing children.

Key agencies to target would be law enforcement, education, criminal justice and social services. The training for law enforcement should be a part of the 48 hours which each law enforcement officer is required to take every three years. School personnel should receive training in how to handle situations when a child says he/she is not with his/her "right" parent, demonstrates evidence of abuse, or in subtle ways asks for help. This will require information on the law and legal and personal responsibility.

Information should be provided to criminal justice system personnel on personal issues and problems related to child abduction and missing children. Those providing services to individuals and families, such as social workers, doctors, psychologists and counselors, should be trained to recognize the problems of families going through the trauma of searching for their child and the aftermath

of the child's return.

Except for children taken by strangers, little attention is focused on other kind of missing children. Strategies must be developed and employed that will continue to keep the public aware of the many categories of missing children and the problems realized by those missing youth and their families. Agency personnel must also receive updated information on a regular basis. They, in turn, should be required to pass on this information to those they serve, namely parents and children.

A coordination of services, including training and educational programs, and the identification of resources, with locations and the way to access them, will ensure that services are accessed by those who need them. This must be the responsibility of an agency and specific individuals within that agency. To widely distribute this information, a directory of services and regular publications by the coordinating agency should be developed. Other methods for presenting information, such as Public Service Announcements (PSAs), newspaper articles and ads, and billboards could be developed and coordinated by this agency. Since accurate statistics are not currently available, mandatory reporting by all law enforcement agencies should be required. Compilation of this data could be another function of the coordinating agency.

The Governor should declare one week in 1991 Missing Children's Week. During that week one day should be set aside for a resource fair at the Capitol. The Governor should also send message to law enforcement agencies to be read at roll calls during that week. As the kick-off to the week, he could hold a news conference informing the public about the

issues and the activities that will occur during that week.

One of the problems with identifying missing children is that while physical descriptions of them are currently listed within the BCA data base, information on them can only be accessed through their birth date, real name or social security number. The difficulty in obtaining this information, particularly on young children who do not know these things about themselves, means it could take weeks to check out a report on a potentially abducted child. By then he or she may no longer be in the area of the sighting. Expanding the BCA data base to be accessed by physical descriptions would assist in the searching and retrieving of information which will enable agencies to find these children sooner.

Subcommittee Members: Carol Watson, Chair; Dixie Waller Anderson, Donna Anderson, Nancy Hite, Christine Koch, Sue Pagnac, Sr., Marge Romero

RECOMMENDATIONS

1) A Missing Children's' Awareness Week should be declared in 1991, which will include a residence fair , PSA campaign, readings of information during law enforcement roll call, and a variety of coordinated activities statewide.

2) Law Enforcement Officers" recertification training should require that eight (8) hours, out of the required 48 hours every three years, be in the area of victims' rights and child victim issues.

3) Two (2) new positions be created at the Minnesota Missing Children Clearinghouse at the BCA; (1) a coordinator for training and educational programs and (2) a victim services advocate and

resources coordinator, who would also be in charge of publishing a quarterly bulletin.

4) Files within the SCA database should be accessible by physical description of the child.

SUMMARY

This report from the Task force on Missing Children conclusively shows the need for immediate action in a range of areas in order to begin the process of addressing issues regarding missing children. After nine months of research, it became very clear to Task Force members that even if all recommendations in this report were to be adopted, that progress, while significant, would still be only the first steps necessary in coming to grips with the problems we and our children now face.

The Task Force identified five key areas related to the missing children problem. The categories include non-family abduction, parental abduction, runaway and throwaway children, public information and education, and system needs. Subcommittees studied each of these areas in producing a report and recommendations. The recommendations, in no particular order of priority, include

> registration of, and mandatory treatment for, convicted sex offenders.

> establishing a Violent Crime Center.

> granting custodial parents the right to take civil action against anyone who abducts or assists in the abduction of their children.

> require law enforcement agencies to begin an immediate search when a child is reported missing.

> step up investigative and prosecutorial

efforts in parental abduction cases to reflect the crime's felony status.

> develop a massive public education campaign to prevent parental abuse which is a major factor in cases of runaway and throwaway children.

> increase criminal penalties for inducing 16-to-18year-olds
involvement in prostitution.

> strengthen and expand the Children's Trust Fund.

> establish prevention education programs in schools.

> institute a Missing Children's Awareness Week.

> require law enforcement recertification training programs dedicate time to the study of victims' rights and child victim issues.

> files on missing children within the Bureau of Criminal Apprehension must become accessible by the physical description of the child.

In addition, the Task Force identified but was unable to address another area of major concern. In researching other areas, it became very apparent that communities of color have their own unique problems regarding missing children. The Task Force believes these communities are an under-served population that would immensely benefit from specific culturally sensitive programs and urges further action in this area.

The Task Force stresses that this Report is not a definitive work, rather it is a first attempt to address the most serious and identifiable aspects of

the missing children dilemma. In fact, there is a general consensus among Task Force members that some sort of permanent, on-going commission be created to continue critic al work in this area. There is much that remains to be done.

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TASK FORCE ON SEXUAL PREDATORS

Final Report to the Minnesota Legislature January 4, 1995

CREATION AND CHARGE

The Task Force on Sexual Predators was created by the 1994 legislature to "examine current law a n d practice relating to the commitment of psychopathic personalities...and...make recommendations on options, both civil and criminal, for dealing with sexual predators."[1]

The Task. Force was created in response to litigation questioning the constitutionality of Minnesota's psychopathic personality commitment statute.[2]

MEMBERSHIP

The Task Force was made up of a wide range of professionals familiar with the psychopathic personality statute, sex offenders, and the impact sexual assault has on victims. The 13-member task force included representatives of prosecutors, legislators, law enforcement, the Corrections and Human Services Departments, and various mental health professionals.[3]

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[1] Laws of Minnesota for 1994, Chapter 636, Article 8, section 20. See appendix one.

[2] Minnesota Statutes 1992, Chapter 526. See appendix two.

[3] See appendix three fora complete list of the Task Force's membership.

MEETINGS

The Task Force met 13 times to gather information, seek input from a broad spectrum of individuals, and to formulate its recommendations.

It held over 44 hours of hearings and heard from 50 witnesses including the legislative auditor's office, prosecutors, psychologists, defense lawyers, judges, probation/community supervision professionals, law enforcement officers, victims, treatment professionals, corrections representatives, sentencing experts, and Minnesota's Attorney General and Governor. In addition, the Task Force toured the St. Peter Security Hospital, and the Bureau of Criminal Apprehension.

RECOMMENDATIONS

Based upon the input they received and their own personal expertise, the-Task Force made the following recommendations:

> First, in its interim report the task force recommended that if the legislature was called into special session to address the civil commitment of psychopathic personalities, it enact into law bill draft SC3526-4.[4] This bill was enacted by the legislature in substantially the same form as proposed by the Task Force. It was enacted during a special legislative session held on August 31, 1994.
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> Second, the Task Force further recommends modification of. Minnesota's criminal sanctions by the enactment of legislation substantially

[4] See appendix four.

similar to bill draft ES33.[5]5 This bill proposes to make three changes to the patterned sex offender sentencing law:

a) It would lengthen the maximum sentence allowed under the law to forty years. Under current law, the maximum sentence allowed under the law is limited by the statutory maximum sentence provided for. the offense of conviction —as low as five years for some offenses covered by the law.

b) It would require that a patterned sex offender be placed on conditional release for the rest of his or her life after being released from state prison. Under current law, the conditional release term lasts for the greater often years or the time remaining in the statutory maximum sentence. Crimes or other release violations committed during the conditional release term- could result in the offender going back to prison for life.

c) It would expand the scope of the law to. cover persons who plan or premeditate their predatory sex crime. Current law is limited to repeat offenders and to offenders who commit particularly aggravated sexually motivated crimes.

The Sentencing Guidelines Commission and/or the legislature should also continue to review Minnesota's criminal sexual conduct statutes to

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[5] See appendix five.

ensure that the length of sentences that are imposed are appropriate given the crimes committed.

Bill draft ES33 contains not only changes in Minnesota's criminal law, but also recommends training for judges and others on Minnesota's sentencing statutes that are applicable to persons convicted of sex offenses. In the past, the courts have suggested that the legislature should look at strengthening Minnesota's criminal sexual conduct sanctions.

However, the courts themselves have not always made the best use of existing: sentencing options. For example, the Task Force heard testimony that the downward departure rate by judges for criminal sexual conduct offenses was 40% Not all of these departures appeared warranted. Consequently, it is believed that training for the judicial branch on Minnesota's criminal sexual conduct sentencing laws would be worthwhile. Some reflection on the part of the judicial branch as to its sentencing practiced may be beneficial.

Third, the Task Force further recommends the enactment of legislation that provides for public notification when certain high risk sex offenders are released into a community, if the notification will result in increased public safety.

If the state fails within three years to enact a public notification provision, it will lose 10% of its federal funding under the Omnibus Crime Control and Safe Streets Act of 1968 (approximately $782,100).

However, the Task Force strongly believes that any such legislation must balance other competing interests with the public's right to know. With that

goal in mind, the Task Force recommends that any public notification legislation meet several guidelines:

a) Those offenders who fall within the scope of the public notification law should include certain offenders who have been committed to the Commissioner of Corrections and determined to be public risk monitoring cases. The task force could not reach a consensus on whether other offenders who are not committed to the Commissioner of Corrections should also fall within the' scope of the legislation.

b) An exemption to the notification law should be made whenever an offender is placed or resides in a facility that provides 24 hour supervision of the individual or the facility can account for his/her whereabouts on a 24 hour basis. This exemption should be granted only to those facilities whose staff have received training in sex offender super-vision.

c) Standards must be delineated in the legislation so that the scope of the disclosure to the public corresponds to the degree of risk a violator poses. For example, for some offenders limited disclosure to school officials may be warranted. For others, a more general, widespread community notification may be appropriate. Law enforcement and other officials charged with notifying the public will need these guidelines to assist them in determining how, when, and by what

method the public disclosure should be made. These guidelines will also ensure that there is a consistent enforcement of the disclosure law by law enforcement agencies. Individual agencies should not be allowed to develop their own standards for disclosure, thereby creating the possibility for the inequitable application of the law.

Fourth, the Task Force further recommends the enactment of bill draft KC4,[6] which modifies Minnesota's law related to the testing of sex offenders for the human immunodeficiency virus. Currently, the state is losing 10% of its federal funding under the Omnibus Crime Control and Safe Streets Act of 1968 ($782,100) because the law does not require the sentencing court to take the action specified in the statute. Federal authorities are also requiring the statute to be amended to make the factors that trigger the court order disjunctive rather than conjunctive as presently written.

Fifth, the Task Force further recommends that the money, which will be obtained as a result of the enactment of their fourth recommendation, be used to update computer capability and staffing levels within the Criminal Assessment Program (CAP) of the Bureau of Criminal Apprehension (BCA) as outlined in appendix seven.[7]

Presently, the sex offender registration database, the Minnesota Sex Crimes Analysis Program (MNSCAP), the photo retrieval database and other CAP

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[6] See appendix six.

[7] See appendix seven.

databases are not integrated into a unified computer system. This lack of integration makes data entry and retrieval procedures duplicative and cumbersome. For example, the physical characteristics of offenders are entered separately into the sex offender registration database, the photo retrieval database, the MNSCAP database and depending upon the nature of the crime, the Violent Criminal Apprehension Program (VICAP) database. This duplicative process results in wasted staff time that could be better used actually analyzing the data as opposed to merely "handling" it.

To the extent that the Task Force's fourth recommendation is not sufficient to provide enough money to fund this recommendation, it recommends that an additional general fund, appropriation be made to make up the difference.

Sixth, the Task Force further recommends that any money obtained as a result of the enactment of their fourth recommendation that is not used t o enhance the computer capability of the Criminal Assessment Program in the BCA be used to enhance DNA analysis methods within the Forensic Science Laboratory of the BCA. Additional money should be appropriated as needed to establish a complete polymerase chain reaction (PCR) testing program including purchasing the necessary equipment and supplies; conducting needed training; and remodeling existing lab facilities.

PCR technology will reduce testing time and enable tests to be conducted on smaller and poorer quality samples. Consequently, more cases will be able to be analyzed and more suspects positively identified. In

addition, more innocent persons will be exonerated and have their names cleared earlier. As a result, police departments will see financial savings since they will be better able to focus their investigations more narrowly and accurately. In short, justice will be better served. Seventh, the Task Force further recommends that the governor and the legislature develop a plan for the community placement and supervision of sexual psychopathic personalities and sexually dangerous persons who are provisionally discharged from civil commitment.

At present, there are inadequate community resources to deal with this population of offenders. Yet, the civil commitment process envisions their eventual release, since civil commitment is generally viewed as a temporary confinement and treatment option and not a permanent incarceration solution.

Eighth, the Task Force further recommends that adequate financial resources be appropriated to ensure that sex; offenders who are released from criminal prison incarceration or placed on probation receive intensive probation and community supervision.

Caseload levels for probation officers are currently at unacceptably high levels to ensure adequate supervision of this population.

The Task Force believes that while intensive supervision can't guarantee the public's safety, it can do a better job of protecting the public than traditional probation or community supervision.

For example, the Task Force heard from the director of one intensive supervision program that no sex offender in their program has committed a new sex

offense while under intensive supervision. This program limits agent's caseloads to 15 offenders; requires multiple visits per week with the offender, including a minimum, of two visits per week at the offender's residence; and imposes unannounced random drug testing.

Ninth, the Task Force further recommends modifications to Minnesota's sex offender registration laws by (a) requiring perpetrators of sexual conduct crimes who come to Minnesota from other states to register; (b) increasing the penalty for failing to register .to a felony for second and subsequent violations of the sex offender registration law; and (c) increasing the length of time that pedophiles must remain registered.

These measures will provide an added level of safety: to the public by strengthening Minnesota's sex offender registration law and by being able to provide law enforcement with information that is not now otherwise available.

For example, under current law sex offenders coming from other states need to register only if they come to Minnesota under an interstate compact.

Tenth, while much of the work of the Task Force has focused on specific criminal or civil law changes, the Task Force also recognizes that the long-term solution to the problem of sexual crimes rests in prevention measures, and early intervention and treatment. The Task Force wants to strongly urge policymakers not to lose sight of this fact.

Nor must they forget that while thousands of dollars are spent on incarcerating offenders, services for victims are no less important and should be

adequately funded. Finally, as a matter of general principle the Task Force believes that even though Minnesota does have the sexual psychopathic personality civil commitment process that can be used for certain offenders when it is appropriate, the long-term goal of policymakers should be to diminish the use of that mental health system and increase the use of the criminal justice system to deal with those offenders. This will save the state scarce financial resources and at the same time make those individuals criminally responsible for their behavior, which should be Minnesota's long-term goal.